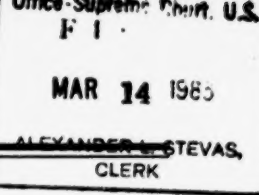


82-1543

No.



IN THE
Supreme Court of the United States

OCTOBER TERM, 1982

In the Matter of the Application for the appointment of a
Committee of the person and property of ANNA RICHTER,
an alleged Incompetent

CHRISTINA REEDMAN,

Petitioner,

—vs.—

ALICE RICHTER RUSSO,

Respondent.

**PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE STATE
OF NEW YORK, APPELLATE DIVISION
2ND DEPARTMENT**

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Questions Presented

1. May a state court, consistent with the Fourteenth Amendment deny equal protection of law to a mentally defenseless person by ignoring the prohibition of a state statute (The Mental Hygiene Law) against paying duplicate fees to contending attorneys in a proceeding for the appointment of a Fiduciary, and compel such a person to pay, for the first time in the history of the state, duplicate fees to two opposing lawyers to have a Conservator appointed for her?

2. May a state court, consistent with the Fourteenth Amendment deny due process of law to a mentally defenseless person by imposing on her a Co-Conservator she rejected and which Conservator was not approved by her Guardian Ad Litem and who compels her to live like a pauper in the rear of a tailor shop despite her \$500,000 estate?

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Petitioner-
APPELLANT

- vs -

ALICE RICHTER RUSSO,

Respondent-
APPELLEE

PETITION FOR WRIT OF CERTIORARI

The petition of CHRISTINA REEDMAN,
the Petitioner-Appellant represents.

The instant application to appeal is being taken on behalf of Anna Richter, a mentally defenseless woman 79 years old.

She has been deprived of her Constitutional right to due process by virtue of the fact that a Co-Conservator, Alice Russo, was imposed upon her despite her rejection of said Co-Conservator and despite the fact that her Guardian ad Litem did not approve of said Co-Conservator.

She has been deprived of her Constitutional right to the equal protection of law by virtue of the fact that she is the only mentally defenseless person in the history of the State of New York that was ever compelled to pay two contesting lawyers to obtain the appointment of a Conservator in clear contravention of the

of the Mental Hygiene Law which limits payment to the successful petitioner's attorney.

She is not being adequately cared for by the Co-Conservators, sought to be removed by this proposed appeal, who spuriously promised to provide her with her own apartment but instead have confined her for 14 hours a day in a tailor shop operated by one of her Co-Conservators with whom she must travel every night to another County to sleep.

She is distressed at her plight and has called upon an official of the A.S.P.C.A. for help (EXHIBIT A).

That in the interests of justice, because irrelevant vilification of Appellant, Respondent's sole argument, is made to blur the constitutional issues, Appellant prays that this Court will keep its attention focused

on the genuine needs and rights of the alleged incompetent ANNA RICHTER, the violation of whose Constitutional right to due process and equal protection of law, is sought to be remedied by this application.

A fact of equal importance which Appellant also begs this Court to keep in mind throughout its examination of the arguments pro and con is that this appeal to preserve Anna Richter's Constitutional rights is fully supported by her neutral Court appointed Guardian ad Litem--former Justice Harold Baer of the Supreme Court of the State of New York, unknown to Appellant or her attorney (except as a name in the N.Y. Law Journal) prior to the institution of the incompetency proceeding in the Court below.

This seasoned jurist, who sat

at trial term in the busy Courts of New York State in the City of New York for over twenty-five years evaluating testimony and the credibility of witnesses, spent 37½ hours on the Richter matter-- 5 in Court--assessing the facts, and arguments advanced, and had ample opportunity to "size-up" all parties "live." He stated in writing (EXHIBIT B) that Appellant's Incompetency petition was valid and necessary and that Respondent's intervention by Cross-Petition was "unnecessary," and that the governing New York Statute, viz the Mental Hygiene Law confers no authority on any Court to charge Anna Richter's estate for unnecessary legal services; and that Anna Richter was not receiving from the Co-Conservators the proper care to which her considerable assets entitled her.

Petitioner Christina Reedman, under compelling and immediate necessity of vacating, with her three children, a rent controlled apartment at 317 E. 85th Street, N.Y.C. got permission from Anna Richter to move into a vacant apartment in the empty, neglected adjoining building at 315 E. 85th Street, N.Y.C. owned by Anna Richter.

Said permission to so move was conditioned upon Petitioner promising to repair the non-working boiler in said building and to clean said building.

Petitioner assisted by two friends did extensive cleaning and exterminating of rodents and moved in and hired reputable mechanics at a cost of \$3,746.64 to make the repairs which resulted in restoration of steam heat.

The alleged incompetent, ultimately found after extensive psychiatric examination to be suffering from irreversible brain damage and disorganized in her thinking and recognized even by the laity as being highly suspicious of everyone irrationally accused petitioner's repairmen of stealing the insides of her boiler and refused to further allow petitioner in said building and turned off the steam heat because she believed the boiler would "explode" without the "stolen boiler rods" from inside her boiler.

Her mental derangement was so profound that instead of seeking professional legal advice in her dispute with petitioner she selected as her advocate a notorious mental defective similar to herself, one Hugo Koch, an unemployed vagrant who sleeps in a

cellar a block away and whose abnormal personality is well known to his neighbors. Koch, ordinarily absorbed in suing bus drivers for allowing people on without paying eagerly filed a patently insane complaint with the Appellate Division against Petitioner's attorney for "stealing boiler rods" which was dismissed, it is reasonable to assume, mirthfully on June 6, 1981.

But what was not laughed at was the solid gold fact revealed by said complaint that there was a vacant tenement in a choice section of Manhattan worth around \$500,000.00 with no one in it but helpless Anna Richter who could not manage it.

Within a matter of days after Koch's absurd complaint was dismissed on June 6, 1981 an astounding phenomenon occurred on East 85th Street.

Hon. Robert P. McGreevy, Principal Law Assistant to the Justices of the Appellate Division, First Department, suddenly appeared and proffered his legal services to Anna Richter.

It was an extraordinary thing to do for a highly placed member of the Judiciary who hitherto, we assume, had sedulously obeyed the prohibitions against Court employees practicing law as set forth in Title 22 NY CRR 25.44 (EXHIBIT C) and had remained aloof from the hazards and aggravations of private practice and was content with his lofty position as a disinterested advisor to the learned Appellate Bench in their even handed administration of justice.

What motivated this prestigious lawyer to risk ignoring the prohibitions of Title 22 NY CRR 25.44 and

volunteer to act as Anna Richter's attorney? He stoutly contends that he responded to a telephone call for him to "help" from a friend of his wife (who lived a quarter of a mile away from Richter).

But to those who know that the Appellate Division Courthouse is adjacent to the office of the Appellate Division's Disciplinary Committee, where Koch's nutty complaint was filed, it is apparent that Mr. McGreevy got wind of Richter's vacant \$500,000.00 building through rumors of Koch's insane complaint, and recognizing the situation to be the chance of a lifetime for vast self-enrichment and went up to 85th Street to make the most of it.

Mr. McGreevy followed this stinking, feces-caked old woman around

from June 1981 until September 24, 1981 when she was hospitalized for psychiatric care.

Mr. McGreevy found the time, despite his time consuming judicial duties, to make a series of pilgrimages (including inconvenient trips from his home in fashionable Westchester County) to Richter's \$500,000.00 building on East 85th Street; and rendered legal services in the form of advice on the management of the realty and accompanied her to the bank to guide her financial affairs. When Anna Richter irrationally turned petitioner out of her building and shut off the steam heat which petitioner had paid \$4,000.00 to restore, petitioner finally realized the depth of Anna Richter's mental derangement and upon advice of counsel she properly refrained from

suing this mentally defenseless woman to whom, as can be shown by her own testimony, it would never occur to hire an attorney and instead, also on advice of counsel appealed to Alice Russo niece of Anna Richter's dead husband to come to Richter's aid and get herself appointed as Conservator. When Alice Russo refused, petitioner realizing that Anna Richter would probably freeze to death or be harmed if she tried to remain in her waterless and heatless building in the coming winter then asked the Protective Agency of New York City to get a Conservator for Anna Richter.

Alice Russo refused to act to help Anna Richter because in addition to being penurious she knew (what petitioner did not know then) that Anna Richter wants no part of Alice Russo in her life as she stated to the Mental

Hygiene officials at Metropolitan Hospital, and reiterated in open court on the Record.

On September 24, 1981, petitioner noting abrasions on Anna Richter's chin which might be symptomatic of an illness took Anna Richter to the Metropolitan Hospital. There her feces caked, unwashed person and neglected appearance and her generally confused mental state led the admitting physician to take her in on an emergency admission for psychiatric consultation.

There Anna Richter received badly needed expert help and her mental ailment was diagnosed as an irreversible organic mental syndrome. This initial diagnosis was confirmed by further examinations and observation by experts during the 26 day period she remained in the hospital's psychiatric ward.

In early October 1981, petitioner was informed that various persons were showing interest in Anna Richter and her \$500,000.00 piece of property. Eugene Gross, a former tenant of Anna Richter, appeared at the hospital with Charles Enkling, a local realtor, and demanded immediate custody of brain damaged Anna Richter proclaiming himself to be "manager" of her \$500,000.00 vacant building.

At this point Mr. McGreevy volunteered to take Anna Richter home to his wife but encountered vigorous competition from Gross, the tailor, who also regarded Anna Richter's \$500,000.00 vacant building as his Monte Cristo.

While Gross and Mr. McGreevy were contending for physical possession of Anna Richter like two outfielders after the same fly ball Petitioner moved the

Court to get Anna Richter help.

Around October 6, 1981 petitioner learned that Metropolitan Hospital, tired of waiting for the City Protective Agency to get a Conservator for Anna Richter, intended to release her in the custody of Eugene Gross without Court supervision. Petitioner who knew Gross and Richter for over 12 years felt this decision unwisely conferred upon Gross the status of a de facto Committee and in view of Gross' past hostile encounters with Richter petitioner applied to the Supreme Court by Order to Show Cause dated October 15, 1981 for the appointment of a Committee of the Court's choice other than Petitioner or her attorney to protect the person and property of Anna Richter which consisted of \$40,000.00 in cash and realty worth about \$500,000.00.

Petitioner sought to have Richter's building rehabilitated and Richter installed in an apartment with a professional aide around the clock along with a dog or two.

A former Justice of the Supreme Court, Harold Baer, Esq. was designated Guardian ad Litem of Anna Richter on October 15, 1981. Said Guardian acted promptly and on October 16, 1981 conferred with Anna Richter and her doctors in the psychiatric ward at Metropolitan Hospital. Said Guardian recommended that Anna Richter pending the trial be placed in a good nursing home in the neighborhood with freedom to come and go. The Guardian also recommended, with petitioner's acquiescence, that the application for a Committee be treated as an application for a Conservator.

To implement the Guardian's recommendation that Anna Richter be released to a nursing home in the Guardian's custody pending trial, petitioner obtained an Order to Show Cause, with a stay restraining the hospital from releasing Richter without her Guardian's consent prior to the determination of the motion. Said Order was signed by Justice Alfred Ascione in his home on October 17, 1981, returnable on October 21, 1981. However, Anna Richter's release in Gross' custody on October 19, 1981 in contemptuous disregard of Justice Ascione's stay vitiated Justice Harold Baer's prudent recommendation that Anna Richter be placed in a local nursing home with freedom to come and go and where first class care would be assured her.

Petitioner's application for

appointment of a Court supervised fiduciary to protect the interests of Anna Richter foreshadowed the end of Mr. McGreevy's tenure as Anna Richter's legal advisor and financial guide and burst the bubble of his expectations of eventual vast enrichment. Understandably miffed at losing out on the "big chance" Mr. McGreevy called in an old Appellate Division crony, Mr. John J. Lamandola, Esq., erstwhile Law Secretary to Justice Leonard Sandler of the said Appellate Division Bench, to file a Cross-Petition to dismiss Petitioner's Petition and deny Petitioner's attorney a fee. Mr. McGreevy's hope was to displace Petitioner and her Counsel by said Cross Petition so that his nominee Mr. Lamandola could collect the anticipated substantial legal fee, which when split with Mr. McGreevy would at least

make up for some of that uncompensated time he spent ingratiating himself with Anna Richter from June to September 1981.

Alice Russo (the niece of Anna Richter's husband and rejected by Anna Richter) financially well-off but too penurious to pay a cent to a lawyer to get aid for Anna Richter signed a Cross-Petition on October 23, 1981 only after being assured by Mr. Lamandola that his fee would be awarded to him by the Court out of Anna Richter's funds.

The Cross-Petition was prepared jointly by Mr. McGreevy, acting in clear violation of Title 22 NY CRR 25.44 (Exhibit C) and by his nominee Mr. Lamandola as accessory as is affirmed in writing by the latter.

Mr. Lamandola's affirmation confirms in detail that Mr. McGreevy was

illicitly practicing law in contested litigation. "On October 16 I (Lamandola) examined the (Appellant's) Petition and had conversation with Robert McGreevy concerning the allegations contained in the petition and the intended course of conduct."

"On October 18, 1981, I spoke with Robert McGreevy upon what could be done to assure Anna Richter's release..." (R173)

"On October 19, 1981 conversations ensued between myself... and Robert McGreevy."

"I met with Robert McGreevy to learn...about the unusual circumstances of this case."

"On October 21, 1981 I assisted Robert McGreevy in the preparation and execution of his affirmation in support of the Cross-Petition."

Since the Petition could not be attacked on the ground that there was any substantive or adjective error or defect therein; and since said Cross-Petition merely echoed the relief sought by the Petition in Chief and the recommendation already made by the Guardian, and acquiesced in by the Petitioner, that the application be treated as an application for a Conservator, the only grounds for dismissing the Petition consisted in argumentum ad hominem.

For bringing on said Petition McGreevy and Lamandola and their stooges accused Appellant of:

1. Stealing an oil burner gun.
2. Stealing Richter's bank books.
3. "Committing" Richter to Metropolitan by a ruse.
4. Threatening to kill Richter.
5. Wanting to control Richter's

assets.

6. Wanting to be appointed Richter's Committee.
7. Throwing garbage in Richter's halls.
8. Seeking out elderly to defraud them of their savings.
9. Planning to get \$70,000.00 from "Helen" (no other name and no address).

These preposterous accusations were fully refuted by affidavits of two neutral attorneys and a physician and by a sworn admission by McGreevy that Appellant did "not steal" Richter's "oil burner gun."

In addition to mere accusations the following hostile actions were taken against Appellant and her attorney.

Appellant--whose contractual

relationship with Richter was consummated when she paid out \$4,000.00 to fix Richter's boiler in return for being allowed to rent an apartment--was twice caused to be arrested by McGreevy's and Lamandola's "lynch mob" on 85th Street who decided without any legal adjudication that Appellant was a "Burglar" although all her furniture was in Richter's building. And these incidents took place before anyone was legally appointed to act for Richter.

Next Lamandola had the garbage custodian Maria Keller file a complaint with the Disciplinary Committee of the Appellate Division where McGreevy works charging Appellant's attorney with attempting to defraud "Helen" (no other name or address) of \$70,000.00. It did not work since Appellant's attorney never heard from the Disciplinary

Committee.

Undaunted Lamandola, a former employee of the Appellate Division, after he got Appellant's Notice of Appeal, conspired with another employee of the Appellate Division to mount an investigation of counsel's Conservatorship of a certain Carl Rohrbach hinting that large sums would be shown missing. There was nothing shown to be missing. The best his stooge in the accounting office could do was to complain Rohrbach had no pants--being incontinent he wears diapers and pajamas.

It is interesting to note that when Appellant and Appellant's counsel sued Mr. McGreevy and Mr. Lamandola for slander and abuse of process their reaction was to file a complaint against them with the Disciplinary Committee for daring to sue them.

Mr. Lamandola also falsely accuses the Appellant herein of bringing numerous law suits against Anna Richter's estate. Appellant was arrested several times by Lamandola's "lynch mob" for entering Richter's building in which she had been rented an apartment by Richter in return for spending \$4,000.00 to repair Richter's boiler. When told by Lamandola he was not merely going to throw her furniture on the street but would appropriate it in broad daylight in front of her eyes Appellant sought and obtained a restraining order from the Supreme Court of New York.

Lamandola--not appellant--then sued in the Landlord Tenant Court to circumvent the restraining order. This is the extent of so called "needless litigation."

But the one fact that Mr. Laman-
dola relies upon in lieu of legal prece-
dent in his notably citationless brief
below, is that shortly after Anna
Richter turned Appellant out of her
building and denied her access to the
apartment she had rented her therein,
it became necessary for Appellant and
her counsel to enter a marriage con-
tract.

A brief synopsis of the perilous
events which were the producing cause
of said marital contract may aid the
Court in determining its relevance,
not only to the only issue presented by
Appellant's petition below under the
Mental Hygiene Law, viz: Did Anna
Richter's mental disability require the
Court to appoint a fiduciary to help
her?; but also, the relevance of said
marital contract as a justification on

this application for ignoring Anna Richter's present plight and denying her, her Constitutional rights to due process and equal protection of law-- and the liberty for which she yearns.

Appellant, an unwed working mother (103), was a tenant of Anna Richter's at 317 East 85th Street, New York City from 1964 to 1972. Mrs. Richter sold it in 1972; and by 1977 only Eugene Gross' family and Christina Reedman's family remained therein.

Mr. Gross's son Richard was nearly murdered in said vacant building.

The Police Report reads:

"...perpetrator approached him in hallway...put a knife to his throat..."

Police Report reads:

"...perpetrator done 8 years in prison for homicide and has been out a few years."

Police Report reads:

"...this is not the first time his (Gross's) apartment was burglarized..."

Because of the aforesaid terrifying conditions, Appellant's counsel gave Appellant's young children a temporary but precarious refuge in his 6 room rent controlled apartment until Appellant could find an apartment she could afford. Counsel's conduct was sanctioned by the Rent Commissioner.

The Rent Commissioner after a plenary trial held:

"It appears eminently credible UNDER THE CIRCUMSTANCES in this proceeding that a concerned parent would avail herself of the opportunity to accept the kindness of a friend to provide shelter for her children."

The Appellant herein in January 1981 was locked out of Anna Richter's building at 315 East 85th Street by

brain damaged Anna Richter after Appellant fixed Anna Richter's boiler therein at a cost of \$4,000.00 was and told she and her children could move their furniture from 317 East 85th Street and live there as tenants. Soon afterward Appellant's Counsel who had been giving Appellant's children a temporary refuge as described above was served on April 11, 1981 with a ten day Notice of Eviction (Exhibit I) to turn said children out of his apartment or be evicted with them. To avoid such a catastrophe Appellant's Counsel complied with Section 52a of the Rent Control law and made Appellant's said children immediate members of his family, so they could not be evicted, by going through a marriage ceremony on April 20, 1981 the 9th day of the 10 day period (Exhibit J) allowed in said eviction notice to remove this

violation of his tenancy.

The Guardian whose only interest was to determine if Anna Richter needed a Conservator stated that the Petition seeking help for Anna Richter was justified by the facts of her deranged mental condition, neglected property and pitiable life style and described the Cross-Petition as "unnecessary;" and that there was no justification for the dismissal of the Petition in Chief; and that Petitioner's attorney was entitled to a fee for the necessary and valuable work performed in getting help for Anna Richter when no one else had acted to get her help although they had ample opportunity to do so.

A trial of the issues came on to be heard before Justice Frank J. Blangiardo in Special Term, Part One of the Supreme Court on November 12, 1981

and the Court decided to appoint Alice Russo and Eugene Gross as Co-Conservators despite the recommendation of former Justice Harold Baer, Anna Richter's Guardian that a neutral and knowledgeable real estate lawyer be appointed as Co-Conservator along with either Russo or Gross.

The appellant's Petition was granted. However, Petitioner's proposed Order was not signed since in conformity to the prohibitions of the Mental Hygiene Law said order made no provision for the allowance of a fee and disbursements to Cross-Petitioner's attorney who unsuccessfully opposed the Petition.

The Court signed the Counter-Order submitted by Cross-Petitioner on December 8, 1981 declaring Anna Richter to be in need of a Conservator and appointed

therein Alice Russo and Eugene Gross a Co-Conservators; and thereby approved a plan to provide Anna Richter with the social services she needs by, if possible, renovating her building and restoring her to an apartment therein with an aide companion, which plan was never carried out by the Co-Conservators although no stay was ever sought to prevent them. Said order allowed a fee of \$2,500.00 plus disbursements of \$94.00 to Cross-Petitioner's attorney; and allowed a fee of \$2,500.00 plus disbursements of \$74.00 to Petitioner's attorney; and allowed a fee of \$2,500.00 to the Guardian ad Litem.

In the interim between any renovation of her building and her return to an apartment therein the Court permitted Anna Richter to live in the home of Eugene Gross. But as Petitioner points

out Anna Richter in reality is confined 14 hours a day in the contiguous quarters of Mr. Gross' Dry Cleaning Store breathing in chemical cleaning fluid fumes, and at 79 years of age must travel to Queens every night and does not get her supper until 9 or 10 p.m.

From the parts of the Order allowing fees and disbursements to the attorneys for Petitioner and Cross-Petitioner and to the Guardian ad Litem Petitioner appealed; and from that part of said Order that appointed Alice Russo and Eugene Gross as Co-Conservators; and from that part of the Order that permitted the sale of Anna Richter's building by the Co-Conservators for the purpose of putting her in a facility they deem proper; and from that part of the Order that

permitted Anna Richter to live with Co-Conservator Eugene Gross, Petitioner appealed.

Appellant filed her appeal with the Appellate Division, First Department of the Supreme Court of the State of New York.

When it was noted that Mr. McGreevy, the Principal Law Assistant to the Justices of said Appellate Division was actively engaged in the litigation the Appellate Division, First Department, on the Court's own motion, transferred the appeal to the Appellate Division, Second Department which affirmed Justice Blangiardo's order without opinion July 26, 1982 (Exhibit D).

Appellant then moved in the Court of Appeals of the State of New York for permission to appeal to said Court but

said motion was denied without opinion on October 19, 1982 (Exhibit E).

Appellant then moved in the Court of Appeals for permission to reargue said motion for leave to appeal but said motion was denied without an opinion on December 14, 1982 (Exhibit F).

Appellant, up to that time had not believed it possible that any Appellate Bench would, by ignoring the clear requirements of the Mental Hygiene Law restricting fees to the successful attorney only (already construed in Appellate level decisions) deny to Anna Richter the equal protection of said law. Therefore, Appellant moved the Court of Appeals for permission to reargue said motion for leave to Appeal but said motion was denied without opinion on December 14, 1982.

Appellant on said application to re-
argue directed said Court's attention
to the constitutional questions in-
herently involved in the issues raised
on said Appeal, viz: Is Anna Richter's
constitutional right to due process of
law being violated by imposing upon her
a Co-Conservator she rejected in open
Court who compels her to live like a
pauper for 14 hours a day in a tailor
shop while she pleads with friends for
help (Exhibit A) in restoring her liber-
ty; and is Anna Richter's constitutional
right to equal protection of law being
violated by the Court order which made
her the only person in the history of
New York State to be compelled to pay
from her estate duplicate fees to con-
tending attorneys in contravention of
the Mental Hygiene Law which has been
construed to restrict payment to the

attorney who successfully petitions the Court.

The Court of Appeals denied Appellant's motion for leave to reargue the motion to appeal thereto--again without opinion.

Appellant now comes, on behalf of ANNA RICHTER, to the Supreme Court of the United States seeking this Court's aid in obtaining recognition of her Constitutional rights to due process of law through which her lost liberty will be restored to her; and recognition of her Constitutional right to be afforded the equal protection of law and treated the same as every other person for whom a fiduciary is appointed under the Mental Hygiene Law of New York State and not unjustly compelled to pay a fee for "unnecessary" legal services (Exhibit B) even though

said services are imposed upon her by an active member of the judiciary illicitly practicing law and his crony a former member of the judiciary who are apparently receiving preferred treatment because of their high station.

Anna Richter has been deprived of Due Process of Law by imposing on her a Co-Conservator she rejected in open court and which was not approved of by her Guardian ad Litem; and which error has resulted in compelling her to live like a pauper fourteen hours a day in the narrow confines of a tailor shop which is not commensurate with her ownership of a \$500,000.00 estate.

In re Knapp's Estate, 18 Misc.
285.

In re Kalthoff, 298 NY 458.

Jerome Realty Co. v. Willis, 156
Misc. 581.

"Exact meaning of due process cannot be defined and depends on the nature of the case."
In re Coates 368 U.S. 34.

"Due process can be equated with denial of fundamental fairness." Bagley v. Bagley
292 NY Supp 2nd 796.

"Due process is a matter of substance." Thaiger v. Sachs
60 NY Supp 2nd 926.

"A litigant should have a chance to urge before an Appellate Court that he has in fact or in law been deprived of his day in Court by virtue of an unlawful or erroneous determination by a lower Court." Peo v. Criss 168 NY Supp 2nd 784.

Anna Richter has also been deprived of the equal protection of law since she is the only mentally defenseless person in the history of the State of New York who was compelled to pay, with funds from her estate, duplicate fees to contending lawyers in order to have a Conservator appointed for her.

The Mental Hygiene Law has been

construed as conferring authority to award a fee only to counsel for a successful petitioner and not a duplicate fee to opposing counsel whose cross-petition fails to get a petition dismissed.

The issue of whether, under the Mental Hygiene Law of the State of New York as already construed, the estate of a mentally defenseless person can be taxed for a duplicate, superfluous fee, in violation of the Constitutional Right to equal protection of Law, is of public importance and general interest sufficient to warrant the attention of this Court.

For judicial notice can be taken of the fact that numerous Conservatorship applications are regularly made and unless the error of unconstitutionally awarding a duplicate fee is

corrected, the Richter case will lead to a floodgate of cross-petitions by venturesome litigants who will count on their attorneys being awarded fees from the helpless Conservatee's estate whether or not such cross-petition succeeds in dismissing a valid petition in chief. The countless thousands of dollars thus mulcted from helpless Conservatees' estates will accelerate the depletion of such estates and more rapidly shift the financial burden of care of Conservatees to the public's shoulders.

Matter of Berman 21 App. Div. 136

In re Rathowsky 251 App. Div. 403

In re Gibbons 183 App. Div. 302

In the Matter
of Annette
Boyle, an al-
leged incom-
petent

Index No. 15519-71
NY Supreme Court,
Spec Term, One, NY
County

"There appears to be no statutory authority for an allowance in this proceeding of a fee or disbursements to counsel for service rendered in unsuccessful opposition to the application for an adjudication of incompetency." In the Matter of Annette Boyle, an alleged incompetent - supra.

"Violation of equal protection can be brought about by an unequal and discriminatory administration of a statute which is fair and legal on its face." Poindexter v. Greenhow 114 U.S. 27; Yick Wo v. Hopkins 118 U.S. 356; U.S. v. Reynolds 235 U.S. 133.

"Equal protection of law means all persons subject to a particular legislative act shall be treated alike as to privileges conferred AND IN LIABILITIES IMPOSED." Tyler v. Eastern Discount Corp. 286 NY Supp 2nd 948; Fenster v. Leary 20 NY 2nd 309; Peo v. Citmiak 299 NY Supp 2nd 593; Peo v. Tormtore 261 NY Supp 2nd 474.

No court, high or low, has any authority to repeal a statute by implication. Steger v. Farrell 15 NY Supp 2nd 904;

"A statute remains fixed until repealed or amended by the legislature." Schumer v. Caplin 241 NY 346.

"The United States Supreme Court will not follow a single decision of a State Court which departs from the whole course of decisions of the State." Gibson v. Lyon 115 U.S. 439.

In N.Y. State a petition for a Committee does not lack merit because petitioner had a claim against the alleged incompetent. Hughes v. Jones 116 NY 67.

The term "cross-petition" is not synonymous or interchangeable with the term "petition" as used in the Mental Hygiene Statute of New York State, and until the legislature amends said statute to state cross-petitions are (as Lamandola contends to justify his duplicate fee) really Petitions the Courts are bound by the statute's clear language. Meltzer v. Koenigsberg 302 NY

523; McClusky v. Cromwell 11 NY 593.

Appellant invokes Rule 17.1.(e) of this Court to sustain the jurisdiction of the Supreme Court of the United States of the instant application and 28 U.S.C. SEC 1257(3).

In view of the solidly established construction of the Mental Hygiene Law by long standing decisions on the Appellate level, limiting the Court's authority to award fees, from a Conservatee's estate, only to the successful party's attorney, the appellant could not reasonably be held to anticipate in advance that the Court would ignore all precedent, and be expected to invoke federal protection in advance against such glaring error.

The record discloses that when it became apparent the Court's error was to be affirmed and that Anna Richter

was to be deprived of her Constitutional right to equal protection of the law appellant sufficiently raised in the highest Court of the State the federal question here presented and is entitled to have it considered.

The same is true of the combined plea of Anna Richter and her Guardian ad Litem, former New York Supreme Court Justice Harold Baer, for the appointment of a seasoned, neutral real estate lawyer as Co-Conservator instead of Alice Russo.

As soon as it became apparent that Anna Richter's right to a proper Co-Conservator was to be denied her and thus deprive her of due process through lack of fairness, appellant raised the federal question.

Missouri v. Gehmer 281 U.S. 313;

Saunders v. Shaw 244 U.S. 317
et seq.

In concluding her plea for a Writ of Certiorari on behalf of Anna Richter the Appellant asks this Court to consider the needs and Constitutional rights of the alleged incompetent.

It is true Anna Richter is an old woman and does not come before this tribunal with the prestige of a sovereign State or a giant corporation, but this Court, as the guardian of the Constitutional rights of all those living under the protection of the Flag, is her last hope of obtaining the liberty she seeks in order to pursue happiness to the extent of her capabilities in an apartment of her own, as recommended by her Guardian, with an aide round the clock and two of her dogs to give her the affection she has been cruelly and unnecessarily deprived of since the inception of the proceeding

below.

Respondent's vilification of Appellant is the only argument offered in opposition to the fair and sensible recommendations made by Anna Richter's Guardian for her proper care. Conceding for the sake of argument that all the approbrious accusations, concocted by Mr. McGreevy and Mr. Lamandola and heaped upon the heads of Appellant and her counsel in order to hi-jack a fee are true. And let it be further conceded that Mr. McGreevy is a twentieth century counterpart of St. Francis of Assisi (absent only the stigmata) selflessly devoted to assisting the wretched. And that he and his comrade Mr. Lamandola (a selfless champion of all that is good and lawful) must, as current and former members of the judiciary, be accepted as models of

public virtue whose merest allegation carries the same weight as a jury's verdict after trial.

In what way is any of the foregoing germane to the issue of Anna Richter's Constitutional right to due process and equal protection of the law?

Should the alleged vices of Appellant and her counsel be grounds for ignoring Anna Richter's Constitutional right to the proper care recommended for her by her Guardian and which she, as the owner of a \$500,000.00 estate can easily afford?

Why should the virtues of Mr. McGreevy and Mr. Lamandola or the vices of Appellant be grounds to condemn Anna Richter to languish 14 hours a day like a pauper in a tailor shop?

Petitioner herein states that in

the aforesaid order and proceeding certain errors were committed to the prejudice of the alleged incompetent, for whose benefit said incompetency proceeding was brought by petitioner, in the following particulars, to wit:

ASSIGNMENT OF ERROR

The Supreme Court of the State of New York err'd at trial term in that it improvidently exercised its discretion in ordering the appointment of Alice Russo as a Co-Conservator of Anna Richter and the Appellate Division, Second Department err'd in affirming said order of appointment in the face of the fact that Anna Richter said she did not want Alice Russo as a Co-Conservator; and in the face of the recommendation of the Guardian ad Litem that a neutral real estate lawyer be

appointed as Co-Conservator; and in face of the admission in Court by Gross that Anna Richter, with Alice Russo's approval, was spending her days within the confines of his tailor shop. And that the Court's aforesaid error constituted a denial of due process of law to Anna Richter by reason of its fundamental unfairness to Anna Richter which has resulted in a loss of her liberty which was a result not intended by Appellant when instituting the proceeding for the appointment of a fiduciary to aid Anna Richter.

II

The Supreme Court of the State of New York err'd at trial term in ordering that a fee be awarded from Anna Richter's estate to John J. Lamandola, the attorney for Alice Russo the

Cross-Petitioner, and the Appellate Division, Second Department err'd in affirming said order in the face of the fact that the Mental Hygiene statute confers no authority on any Court to award a fee, payable out of a Conservee's estate, to the attorney of a party who unsuccessfully attempts to get a petition for a fiduciary dismissed. This prohibition of the Mental Hygiene Law is solidly established since the authority of the statute has been construed on the Appellate level. To ignore this feature of the Mental Hygiene Law in Anna Richter's case constitutes a manifest deprivation of the equal protection of law in that Anna Richter is the only person in the history of the State of New York that has been ordered to pay legal fees out of her assets to two contending attorneys.

Moreover, if this decision is allowed to stand it will usher in a widespread movement to intervene in proceedings for the appointment of a Fiduciary since the intervening party's attorney will be able to count on a fee whether he wins or loses. It will lead to the looting of the estates of the mentally defenseless.

Wherefore, your petitioner prays that a writ of certiorari may be issued out and under the seal of this Honorable Court, directed to the Supreme Court of the State of New York, requiring and directing that Court, by and upon a date certain, to be designated therein, to certify and send to this Court, for review and determination, a full, true and complete transcript of the record and proceedings in said Court in the matter lately pending therein, numbered

90133/81, and entitled "In the Matter of the Application for the Appointment of a Committee of the Person and Property of ANNA RICHTER, an alleged incompetent, Christina Reedman, Petitioner-Appellant Alice Richter Russo, Cross-Petitioner-Respondent," and that said order of the Appellate Division, Second Department of the Supreme Court of the State of New York be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Court shall seem just and proper.

And your petitioner will ever pray.

Christina Reedman

By THOMAS J. KAVANAGH
Counsel for Petitioner

Appendix A
Letter dated April 16, 1982

The American Society for the
Prevention of Cruelty to Animals
441 East 92nd Street, N.Y., N.Y. 10028

April 16, 1982

To Whom it May Concern:

This is to state that the undersigned received a telephone call on December 17, 1981, from a Mrs. Anna Richter, 315 East 85th Street, New York, N.Y. She stated that she was calling from a telephone in a dry cleaning store at 305 East 85th Street, New York, N.Y. She sounded as if she was deeply distressed at what had happened to her and that she was living in a dry cleaning store without her dogs.

The dogs she was talking about had been taken into custody by the ASPCA on October 8, 1981, and were

still held by us, awaiting their removal by her or her representatives. She pleaded for the animals and I informed her that they could not be released unless we were assured they would be properly cared for.

Numerous calls were made by the undersigned to the conservators of Mrs. Richter, a Mr. Gross, the owner of the dry cleaning store, and a Mrs. Russo, (516) 248-9726, in an effort to have the dogs removed. The only results of these calls were not fruitful as the conservators appeared not to be interested in their welfare.

Finally, a letter was written to the Gross Dry Cleaning Store, c/o Mrs. Richter, on January 12, 1982, by Sheri Trainer, Acting Director of Shelter Operations for the ASPCA, asking that the animals be removed.

To the best of my knowledge, the dogs were finally removed by a Ms. Dale Barreclough, 304 East 82nd Street, New York, N.Y., either in late January, 1982, or early February, 1982, and, again, to the best of my knowledge, are in a kennel somewhere in upstate New York.

Incidentally, the ASPCA has never been paid for the care and medical treatment of these animals for the period of time they were confined to our shelter in Manhattan.

Henry D. Ulrich, Esq.
Director, Humane Law
Enforcement

Appendix B
Letter of Former Supreme Court Justice
Harold Baer, Anna Richter's Guardian
ad Litem in Support of Appeal

"M. CARL LEVINE, MORGULAS & FOREMAN
Attorneys at Law
242 Third Avenue
New York, New York 10017
(212) 759-1780

January 13, 1982

Thomas J. Kavanagh, Esq.
521 Fifth Avenue (17th Floor)
New York, New York 10017

Re: Anna Richter

Dear Mr. Kavanagh:

Thanks for sending to me the
information related to the above matter,
and a copy of your Notice of Appeal.

I have no standing in this
matter after entry of the order and
payment of my fee as guardian ad litem.
While I will not participate in the
appeal I do confirm that my first
report recommended that the proceeding

be changed from a petition for the appointment of a Committee (M.H.L. Article 78) to the appointment of a Conservator (M.H.L. Article 77). Also, my final report strongly recommended that a Co-Conservator, preferably an attorney knowledgeable in the real estate field be appointed with either Mrs. Russo or Mr. Gross. I do agree that the cross-petition was unnecessary and I know of no provision in the Mental Hygiene Law for payment of fees to the attorney for such cross petitioner.

The Conservatee cannot handle her own affairs but she has sufficient understanding to know what she wants. Her desire is to live in the neighborhood and to have her two dogs living with her. She has sufficient assets so that her wishes can and should be

granted. I am sorry to learn that she continues to live in Queens, and that nothing has been done about the property. She most certainly can afford an apartment in the neighborhood and a housekeeper to live with her.

Let me know what progress, if any, is made on the appeal and with respect to Anna Richter.

Sincerely yours,

Harold Baer"

HB/rg

Appendix C
Title 22 NYCRR 25.44

Historical Note
Sec. renum. 25.42, new added by renum.
25.44, filed Apr. 3, 1972 eff.
Apr. 1, 1972.

25.44 Practice of law. (a) A lawyer who is employed full time in any court or agency of the unified court system shall not maintain an office for the private practice of law alone or with others, hold himself out to be in the private practice of law, or engage in the private practice of law except as provided in subdivision (b) of this section.

(b) Subject to the prior approval of the presiding justice of the appellate division of the Judicial Department in which he is employed as to each professional engagement, a

person referred to in subdivision (a) of this section may engage in the private practice of law as to matters not pending before a court of a governmental agency, in uncontested matters in the Surrogate's Court, uncontested accountings in the Supreme Court and other ex parte applications not preliminary or incidental to litigated or contested matters. Such approval shall continue only to the completion of the particular engagement for which permission was obtained.

134 JUD 5-31-77

CHAPTER I JUDICIAL CONFERENCE 25.45

(c) A law secretary or law clerk to a justice or judge who is employed on a part-time basis shall not participate directly or indirectly as a lawyer in any contested action or

proceeding in the court in which he serves, or in any other practice of law which is incompatible with or which would reflect adversely upon his position or the performance of his duties.

(d) No partner or associate of a part-time law secretary or law clerk shall practice law before the justice or judge by whom such law secretary or law clerk is employed.

Historical Note

Sec. renum. 25.43, filed April 3, 1972; new filed May 20, 1977 eff. Sept. 1, 1977.

Appendix D
Memorandum Decision of
Hn. Frank J. Blangiardo upon which
the order appointing Co-Conservators
and awarding fees was made

SUPREME COURT OF THE STATE OF NEW YORK,
SPECIAL TERM PART I, NEW YORK COUNTY
at the Courthouse thereof, 60 Centre
Street, New York City 7, New York.

Present:

HON. FRANK J. BLANGIARDO
Justice

(SAME TITLE)

The following papers numbered 1 to 48
read on this motion, SUBMITTED

No. 179 on Calendar of OCT 26, 1981

	<u>Papers Numbered</u>
Order to Show Cause and Petition Affidavit and Exhibits	1-11
Affidavits of Service of Order to Show Cause	12-15
X-Petition and Affidavits and Exhibits	16-24
Answering Affidavits to Cross-Petition and Exhibits	25-40
Attorneys Affidavits of Services	46-47
Attorney's Supplemental Affidavit of Services	48
Guardian's Affidavit of Services	45

Guardian's Report--
Supplemental Report
and Exhibit
MHIS Memo

41-42-44

43

Upon the foregoing papers this application for the appointment of a conservator after hearing on the record is granted. As to the fee requested by counsel for petitioner, the court finds that the number of hours purportedly spent in connection with this matter are excessive, and the fee requested will be reduced accordingly. The motivation of counsel in instituting this proceeding may not have been in the best interest of the conservatee, but rather the furtherance of an alleged claim against the conservatee by counsel's spouse, the petitioner herself. Nonetheless, as observed by the guardian ad litem, the end result was that worthwhile services

for the conservatee were performed
and her desperate circumstances were
alleviated. Order signed.

Dated Dec. 8, 1981

s/ FB

J.S.C.

FILED
DEC 8-1981
CO. CLERK'S OFFICE
NEW YORK

Appendix E
Order of the Supreme Court

At a Special Term,
Part I of the Supreme
Court of the State
of New York, held in
and for the County
of New York, at the
County Courthouse,
60 Centre Street,
New York, New York,
on the 8th day of
December, 1981.

P R E S E N T :

HON. FRANK J. BLANGIARDO

Justice

-----X

In the Matter of the
Application for the
Appointment of a Conservator
of the Property of

ANNA RICHTER,

Proposed
Conservatee.

COUNTER
ORDER
APPOINT-
ING CO-
CONSERVA-
TORS

Index No.
90133/81

-----X

A petition having been presented
to this Court for the appointment of a
Committee of the person and property of

the above named individual and a cross-petition having been presented to this Court for the appointment of a conservator of the property of the above named individual, and this Court having directed by Order that the questions arising out of said petition and cross-petition be heard by the Court at a Special Term, Part I of this Court, on the 26th day of October, 1981, and HAROLD BAER, ESQ. having been duly appointed and qualified as the guardian ad litem and having appeared for ANNA RICHTER, and THOMAS J. KAVANAGH, ESQ. having appeared for petitioner, CHRISTINA REEDMAN and UNDERWEISER & UNDERWEISER ESQS. By JOHN J. LAMENDOLA, ESQ. Having appeared for cross-petitioner ALICE S. RUSSO and HERSHMAN & LEICHER ESQS. by MARVIN LEICHER ESQ. having appeared for

proposed conservator EUGENE GROSS and said questions raised by the petition and cross-petition having regularly come on to be heard before the Hon. FRANK J. BLANGIARDO, one of the Justices of this Court, at a Special Term, Part I thereof, on the 26th day of October, 1981, held at the Courthouse, in the Borough of Manhattan, County of New York, City and State of New York, and the Court having held a hearing on November 12, 1981 as provided by Articles 77 and 78 of the Mental Hygiene Law, and having decided that there is a necessity for the appointment of a conservator of the property of the above named conservatee, and on decision of the Court after said hearing, and it appearing to the satisfaction of this Court that a conservator should be appointed for the property of the said ANNA RICHTER,

proposed conservatee.

NOW, upon all papers on file herein and all proceedings heretofore had herein, and due deliberation having been had, it is on motion of UNDERWEISER & UNDERWEISER, attorneys for the cross-petitioner,

ORDERED, that all of the income and assets of the conservatee shall be placed under said co-conservatorship, and it is further

ORDERED, that the compensation of the co-conservator as provided for the compensation of a committee of an incompetent as provided in Article 78 of the Mental Hygiene Law is waived, and it is further

ORDERED, that the co-conservators pay to THOMAS J. KAVANAGH, ESQ., attorney for the petitioner herein, the sum of \$2500.00 as and for his legal

services herein, and the sum of \$74.00 as and for necessary disbursements herein, making a total of \$2574.00, and it is further

ORDERED, that the co-conservators pay to UNDERWEISER & UNDERWEISER, ESQS., attorneys for the cross-petitioner herein the sum of \$2500.00 as and for their legal services herein, and the sum of \$96.80 as and for necessary disbursements herein, making a total of \$2596.80 and it is further

ORDERED, that the conservator pay to HAROLD BAER, ESQ. the sum of \$2500.00 as and for his services herein as the guardian ad litem of said conservatee, and it is further

ORDERED, that the conservator pay to RICHARD A. WINTERS, M.D., the sum of \$250.00 as and for his services herein, and it is further

ORDERED, that all persons and parties now in possession of the assets and income of said conservatee, be and they hereby are directed, upon presentation of a certified copy of the commission to be issued herein, to deliver to said conservator any and all of said assets, income and property of the conservatee, and it is further

ORDERED, that any compensation allowed to any Court appointee herein shall not be paid until after said appointee shall have filed such statement of appointment following receipt in this Court that may be required by the Judiciary Law.

E N T E R

J.S.C.

FILED DEC 8-1981, CO. CLERK's OFFICE
NEW YORK

Appendix F
Appellate Division Order of Affirmance

At a Term of the Appellate
Division of the Supreme
Court of the State of New
York, Second Judicial
Department, held in Kings
County on July 26, 1982

HON. GUY J. MANGANO, Justice Presiding,
HON. DAVID T. GIBBONS,)
HON. FRANK D. O'CONNOR,) Associate
HON. WILLIAM C. THOMPSON.) Justices

-----X
In the Matter of Anna Richter :
: :
Christina Reedman, : Order on
: Appeal
Appellant; : from
: Order
Alice Richter Russo, :
: Respondent. :
-----X:

In the above entitled cause, the
above named Christina Reedman,
petitioner, having appealed to the
Appellate Division of the Supreme
Court, First Judicial Department,

from portions of an order of the Supreme Court, New York County, dated December 8, 1981 (by an order of the said Appellate Division, dated May 25, 1982, the said appeal was transferred to this court); and the said appeal having been submitted by Thomas J. Kavanagh, Esq., of counsel for the petitioner and submitted by John J. Lamendola, Esq., of counsel for the respondent, due deliberation having been had thereon; and upon this court's decision slip heretofore filed and made a part hereof, it is

ORDERED that the order insofar as appealed from is hereby unanimously affirmed, with \$50 costs and disbursements.

Enter:

IRVING N. SELKIN
Clerk of the
Appellate Division.

Appendix G
Notice of Decision of Court of
Appeals October 19, 1982

1023 Richter (Reedman-Russo)

State of New York
Court of Appeals
Clerk's Office
Albany 12207

1 Mo. No. 1023
In the Matter of the Application for
the Appointment of a Committee of
the Person and Property of Anna
Richter, an alleged incompetent.

Christina Reedman,
 Appellant,

Alice Richter Russo,
 Respondent.

Motion for leave to appeal denied
with twenty dollars costs and
necessary reproduction disbursements.

DECISION COURT OF APPEALS Oct. 19, 1982

been submitted thereon and due deliberation thereupon had, it is

ORDERED, that the said motion be and the same hereby is denied with twenty dollars costs and necessary reproduction disbursements.

Joseph W. Bellacosa
Clerk of the Court

Appendix I
Letters and Envelopes from
Mautner-Glick Corp. To
Mr. Kavanagh

Mautner-Glick Corp.
Real Estate-Brokerage-Management-
Mortgages
1345 Third Avenue
New York, N.Y. 10021
288-1999

April 11, 1983

Mr. Thomas J. Kavanagh
206 East 83rd Street, Apt. 4-W
New York, N.Y. 10028

Re: 206 East 83rd
Street, Apt. 4-W
New York, N.Y.
10028

Dear Mr. Kavanagh:

Your attention is invited to the
above captioned premises of which you
are the sole legal tenant.

PLEASE TAKE NOTICE that you are in
violation of substantial provisions

of your Statutory Tenancy, under the Rent Control Laws of the City of New York, in that you are permitting or suffering occupancy by sub-tenants, roomers, boarders or other persons not the named tenant or members of such tenant's immediate family; without the written consent of the Landlord.

PLEASE BE ADVISED that the said Statutory Tenancy will be terminated and eviction proceedings commenced unless all unauthorized occupants are removed from the premises within ten (10) days from the receipt hereof.

Very truly yours,
MAUTNER-GLICK CORP.

By: Carey Gouldner,
Agent

ceg:

Registered Mail, R.R.R. & Regular Mail

RESTRICTED DELIVERY

cc: Ms. Christina Reedman, As Occupant
206 East 83rd Street, Apt. 4-W
New York, N.Y. 10028

"John Doe" Occupant
"Jane Doe" Occupant
206 East 83rd Street, Apt. 4-W
New York, New York 10028

Appendix J
Marriage Certificate

THE CITY OF NEW YORK
OFFICE OF CITY CLERK
MUNICIPAL BUILDING, MANHATTAN

No. 78914 Marriage License
 No. 06664 1981

Certificate of Marriage

I, Herbert F. Ryan, duly designated by
the City Clerk of the City of New York
to solemnize marriages, Do Hereby
Certify that I did solemnize the rites
of Matrimony at the Office of the City
Clerk, in the Borough of Manhattan,
City of New York, State of New York
between Thomas J. Kavanagh of New York
in the County of New York State of New
York and

Christina Reedman of New York in the
County of New York State of New York
in the presence of Martha A. Mikarowski

and _____ as

witnesses.

Witness my hand this date,
April 20, 1981 at the Office of
the City Clerk, Borough of
Manhattan, City of New York,
State of New York.

Deputy City Clerk of the
City of New York, Borough
of Manhattan

No. 78914 Receipt for Free of \$5.00 for
Performance of Marriage Ceremony